



IN RE:	§	
HOUTEX BUILDERS, LLC	§	CASE NO: 18-34658
and	§	
415 SHADYWOOD, LLC	§	CHAPTER 11
and	§	
2203 LOOSCAN LANE, LLC,	§	
Debtors.	§	
	§	
HOUTEX BUILDERS, LLC	§	
and	§	
2203 LOOSCAN, LLC	§	
and	§	
415 SHADYWOOD, LLC,	§	
Plaintiffs,	§	
	§	
VS.	§	ADVERSARY NO. 20-3237
	§	
HL BUILDERS, LLC	§	
and	§	
ANNA WILLIAMS,	§	
Defendants.	§	

## ORDER DENYING DEFENDANT'S MOTION TO DISMISS

Anna Williams has filed an Emergency Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(1) and Federal Rule of Bankruptcy Procedure 7012(b) (ECF No. 55) based upon her argument that the Plaintiffs lost their standing to bring the complaint as a result of an assignment of their claims to Spirit of Texas Bank, SSB. For the following reasons, the motion to dismiss is denied.

## PROCEDURAL BACKGROUND

This Adversary Complaint (ECF No. 1) was filed on June 29, 2020, and amended on August 19, 2020 (ECF No. 18). The causes of actions plead by the plaintiffs are 1) breach of contract, 2) avoidance of transfers action pursuant to 11 U.S.C. §§ 548(a)(1)(A) and (B), 3) avoidance of transfers under 11 U.S.C. § 544(b) and Texas Business & Commerce Code §§ 24.005(a)(1) and (2) (TUFTA), and 4) recovery of transfers under 11 U.S.C. § 544(a) and TUFTA. All causes of action are based upon the relationships and contracts between the parties.

Anna Williams filed a previous motion to dismiss on September 2, 2020 (ECF No. 31). This motion argued that the amended complaint failed to state a cause of action and that the plaintiffs lacked standing. This motion was denied on October 5, 2020 (ECF No. 44). In addition,

the Court entered an Order Scheduling Trial on September 2, 2020 (ECF No. 36), which provided that any dispositive motions shall be filed no later than March 8, 2021. This case is set for trial on April 19, 2021.

## JURISDICTION AND VENUE

This Court has jurisdiction over this Motion to Dismiss pursuant to 28 U.S.C. §§ 1334(b), 157(b)(2)(A) (administration of the estate), and (H) (proceedings to determine, avoid, or recover fraudulent conveyances). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicate for relief is Fed. R. Civ. P. 12(b)(6), made applicable to this proceeding through Fed. R. Bankr. P. 7012 and Local Rule 7012.

## **LEGAL ANALYSIS**

Ms. Williams was aware of the deadline to file dispositive motions in the Order Scheduling Trial, and was aware of the motion to compromise that led to the assignment of the claims to Spirit of Texas Bank, SSB. The Court notes the untimely nature of the instant motion. The defendant has waited until eleven days prior to trial to file this motion. Moreover, the Fifth Circuit has held that Rule 25(c) of the Federal Rules of Civil Procedure is designed to allow the action to continue unabated when an interest in the lawsuit changes hands, and that it was erroneous to dismiss a claim for lack of standing due to a transfer of interest that occurred while litigation was pending. Accordingly, the motion to dismiss must be denied.

**THEREFORE, IT IS ORDERED** that the Emergency Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(1) and Federal Rule of Bankruptcy Procedure 7012(b) (ECF No. 55) is denied.

SIGNED 04/09/2021

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<sup>&</sup>lt;sup>1</sup> Matter of Covington Grain Co., Inc., 638 F.2d 1362, 1364 (5th Cir. 1981).

<sup>&</sup>lt;sup>2</sup> Matter of Texas Gen., No. 93-2399, 1994 WL 24886, at \*1 (5<sup>th</sup> Cir. Jan. 12, 1994).